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## The Dilemmas of Anonymity and Anonymous Data in the Digital Economy

The innovations being introduced into the digital economy are outpacing our ability to adapt principles, policies, guidance and Privacy by Design into the many facets of anonymity and anonymous data. An exponential amount of information is being generated each second about us, our movement, our health, finances, fashion, work, play and so on. What is anonymous data in one context becomes identifiable, instantaneously. One moment we are anonymous and the next not. Whether we have a right to remain anonymous or to have our data anonymous becomes a mute point.

Giusella Finocchiaro, attorney and founder of Studio Legale Finocchiaro in Italy helps us understand the dilemmas of both anonymity and anonymous data and what we as responsible and accountable entities can do to advance the resolution of the dilemmas and generally do the 'right thing' for the individual, our regulators and our companies.

Giusella is also Professor of Internet Law at the University of Bologna and author of a book on anonymity and of many articles on the subject (*Diritto all'anonimato. Anonimato, nome, identità personale*, Cedam, Padova, 2008; *Anonymity and the Law in Italy*, in *Lessons From the Identity Trail - Anonymity, Privacy and Identity in a Networked Society*, I. Kerr - V. Steeves - C. Lukock (ed.), Oxford University Press, 2009).

### **Nymity: What are the current dilemmas with Anonymity and Anonymous Data?**

**Finocchiaro:** The dilemma is if **anonymity and anonymous data** exist in the present technological environment or if technology renders **anonymity and anonymous data** impossible.

The fundamental question is the very definition of anonymity and of anonymous data.

The concept of anonymity has gained particular importance in relation to the application of the European legislation on personal **data protection**. This regulation is constituted by the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data and by the Directive 2002/58/EC on privacy and electronic communications. The only data which are not "personal data" and therefore are outside the field of the application of the two directives are "anonymous data".

### **Nymity: What is Anonymity?**

**Finocchiaro:** This is "the" question.

**Anonymity means being anonymous.**

The common understanding of anonymity, which comes from the etymology of the term, is "without name".

But today is not sufficient being without a name to be anonymous. The identity can be reconstructed through many different information: for instance, through the connection to an ISP, through the use of credit cards, etc.

Strictly connected to the definition of anonymity is the definition of anonymous data.

### **Nymity: What is Anonymous Data?**

**Finocchiaro:** The definition of “anonymous data” is not found in the two EU Directives on data protection. However, there is a reference to anonymous data in the “whereas 26” providing that “(...) to determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the said person; whereas the principles of protection shall not apply to data rendered anonymous in such a way that the data subject is no longer identifiable; (...)”.

According to the Opinion 4/2007 on the concept of personal data adopted by Art. 29 Working Party<sup>1</sup>, “‘anonymous data’ can be defined as any information relating to a natural person where the person cannot be identified, whether by the **data controller** or by any other person, taking account of all the means likely reasonably to be used either by the controller or by any other person to identify that individual”.

### **Nymity: Can Anonymous Data be achieved? When is it not achievable and who gets to decide?**

**Finocchiaro:** I think that anonymous data in a technologically connected world is very difficult to achieve. The connection of many potential identifiers can make anonymity impossible: anonymized data can be re-identified under some circumstances, and re-identification is still possible if data crosses multiple devices and networks.

### **Nymity: What can companies do to help advance the resolution of the dilemmas and to avoid making the issues worse for individuals while delivering the benefits to be derived in various industries in the digital economy by data?**

**Finocchiaro:** Companies can communicate risks in a transparent way and can adopt the best security measures to protect data. Companies should choose to be accountable, apart from legislative prescriptions.

### **Nymity: What can regulators do to help advance the resolution of the dilemmas and to avoid making the issues worse for individuals while delivering the benefits to be derived in various industries in the digital economy by data?**

**Finocchiaro:** Regulators can help in clarifying concepts. A clarification concerning the concept of anonymous data would be extremely useful.

### **Nymity: Is there a different way forward that we have yet to discover? If, so what do you recommend, especially on the eve of the digital explosion of the Internet of Things (IoT)?**

**Finocchiaro:** I think that a distinction between absolute and relative anonymity should be introduced. If there is a possible connection with the originator, in the present or in the future, then anonymity is relative. If not, anonymity is absolute.

As I said, absolute anonymity in a digital world is almost impossible to achieve.

There is a graduation of anonymity. I think that anonymity in processing of personal data is not an absolute concept: it is, on the other hand, a relative and functional concept, measured through reasonableness. Data can be anonymous for some, but not for others: relativity is therefore central to the definition. Data can be anonymous for certain uses, but not for others. Whether anonymity exists or not, is measured through the criterion of reasonableness with a case by case approach. In summary, it is not correct to describe anonymity as a black or white (absolute) concept.

<sup>1</sup> [http://ec.europa.eu/justice\\_home/fsj/privacy/docs/wpdocs/2007/wp136\\_en.pdf](http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2007/wp136_en.pdf)

**Nymity:** In closing, what have we not asked you that would be meaningful for our readers to know about?

**Finocchiaro:** As the question of anonymous data makes clear, the evolution of technology has made it necessary to move to a new approach for data protection. It is not effective to impose the same approach used for fixed computers to the mobile and diverse environments of today. New models are needed, and they are already being developed by researchers and technologists.

For instance, a possible quantification of **anonymity** has been studied by computer scientists, with the studies on k-anonymity. A possible application of these studies would be to communicate very clearly to the data subject the true level of anonymity of his/her data, using a numeric value. In this way, the communication would be more objective and simpler.